

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN, P.C.,**

**Plaintiff,**

**v.**

**JACK H. BOYAJIAN, ET AL.,**

**Defendants.**

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**CIVIL ACTION**

**NO. 07-1265**

**MEMORANDUM AND ORDER**

**Tucker, J.**

**July \_\_, 2008**

Following a bench trial in this matter on May 19, 2008 and pursuant to Rule 52 (a) of the Federal Rules of Civil Procedure, the Court makes the following Findings of Fact and Conclusions of Law:

1. This is an action to collect fees for legal services provided by Plaintiff to Defendants. Plaintiff, Marshall Dennehey, Warner, Coleman & Goggin, P.C. ("Marshall Dennehey"), is a law firm whose attorneys practice in several states, including the Commonwealth of Pennsylvania.

2. The action was brought against Defendants Jack Boyajian, Esquire, Marvin Brandon, Esquire and Karen Wachs, Esquire, all of whom are attorneys who at various times were law partners or law associates of Mr. Boyajian. Also named as Defendants are the various law firms and entities with which the individual Defendants are or were affiliated ("Defendant business organizations"). The principal partner and owner of these firms is (or was) Jack Boyajian.

3. The Court has subject matter jurisdiction pursuant to the federal diversity of citizenship statute, 28 U.S.C. § 1332, and the Court will apply Pennsylvania substantive law to the claims and defenses of the parties.

4. Defendants' prior counsel, Jacobs Law Group, P.C., was permitted to withdraw from the matter on February 19, 2008 (Doc. 23), and the individual Defendants Jack Boyajian and Marvin Brandon represented themselves at trial *pro se*. The Defendant business organizations were not represented at trial and tendered no defense. Pursuant to a release executed by Defendant Karen Wachs, Plaintiff agreed to dismiss its Complaint as to her prior to trial.

5. The evidence introduced at trial established that, at the request of Karen Wachs and Jack Boyajian, Marshall Dennehey agreed to provide legal representation of Defendants in regard to multiple lawsuits filed against them arising out of their various debt collection activities, including several class actions brought against Defendants under the Fair Debt Collection Act 15 U.S.C. § 1692. The retention of Plaintiff was accomplished by a series of e-mails, dated April 14, 2004 to May 10, 2004, that were exchanged between Plaintiff and Ms. Wachs and Mr. Boyajian and which was identified as Exhibit "A." to Complaint (Doc. 1). Marshall Dennehey was retained in subsequent cases under the same terms, which was confirmed in correspondence between the parties.

6. The Court finds that, in fact, Marshall Dennehey performed legal services as set forth in their invoices and account receivable records which were introduced at trial.

7. The Court further finds that Defendants received and accepted the legal services reflected in Marshall Dennehey's invoices and account receivable records.

8. Plaintiff charged a fee of \$200 an hour in the class action matters and \$175 an hour in the other matters, which the Court finds is fair and reasonable for the legal services that were rendered in these matters.

9. **The outstanding balance for services rendered by the Plaintiff for the benefit of Defendants is in excess of \$160,092.76 ("Outstanding Balance").**

10. Defendants failed to pay the Outstanding Balance.

11. Marshall Dennehey made efforts by correspondence, e-mails and telephone calls to collect the Outstanding Balance.

12. Despite the demand for payment, Defendants failed to make payment of the Outstanding Balance.

13. Defendants contend in their Answer that they are not liable to pay the outstanding balance because Plaintiff's claims are barred by the Pennsylvania Statute of Frauds.

14. The Court disagrees. Service contracts, including fee arrangements between lawyer and client, are not within the ambit of the Statute of Frauds. See 33 Pa. Cons. Stat. § 1. Further, it is notable that even where a writing would technically be required under the statute, sufficient performance and partial payment for services rendered, as occurred here, is evidence that will take a contract out of the Statute of Frauds. See, e.g., Eastgate Enterprises, Inc. v. Bank and Trust Co. of Old York, 345 A.2d 279, 280-81 (Pa. Super. Ct. 1975) (stating rule). **Thus, Defendants' arguments based upon the Statute of Frauds merit no further discussion or consideration.**

15. To the extent that Defendants contend that a writing is required to establish an attorney-client relationship under the Pennsylvania Rules of Professional Conduct, the applicable Rules provide that there must be a writing describing the rate to be charged the client: "When the

lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.” Pa. Rules of Prof’l Conduct R. 1.5(b).

16. Further, “[i]n a new client-lawyer relationship ... an understanding as to the fee should be promptly established. ... A written statement concerning the fee reduces the possibility of misunderstanding. Furnishing the client with a simple memorandum or a copy of the lawyer’s customary fee schedule is sufficient if the basis or rate of the fee is set forth.” Pa. Rules of Prof’l Conduct R. 1.5 cmt.

17. The Court finds that the e-mail exchanges between the parties at the inception of their relationship in the matter of Thomas v. JBC, see Exhibit “A” to the Complaint (Doc. 1), and subsequent correspondence more than satisfies the requirements of Pa. Rules of Prof’l Conduct R. 1.5 because they advised Defendants of the nature of the relationship between the parties and stated the rate of the fee to be charged.

18. Defendants also contend that they are not liable for the unpaid balance to Plaintiff because in the email exchange between the parties, Defendants asked for “monthly invoices.”

19. The Court notes, as an initial matter, that the fee arrangement does not say that invoices for legal services will not be paid if not submitted on a monthly basis only that they should be submitted on a monthly basis.

20. In the absence of a specific provision to this effect, the Court looks to the conduct of the parties to determine if they interpreted the agreement so as to cause a forfeiture of fees if the invoices were not submitted monthly.

21. A court may look to the parties' course of conduct to determine whether a contract is ambiguous, Atlantic Richfield Co. v. Razumic, 390 A.2d 736, 741 n. 6 (Pa. 1978), or to resolve an ambiguity; Resolution Trust Corp. v. Urban Redevelopment Auth., 638 A.2d 972, 975 (Pa. 1994). No evidence was introduced by Defendants that they ever advised or notified Marshall Dennehey that they would not pay invoices that were not submitted on a monthly basis.

22. In addition, Pennsylvania courts have held that "a written contract must be construed as a whole and the parties' intentions must be ascertained from the entire instrument; effect must be given to each part of a contract." Carosone v. Carosone, 688 A.2d 733, 735 (Pa. Super. Ct. 1997) (citing Wrenfield Homeowners Ass'n, Inc. v. DeYoung, 600 A.2d 960 (Pa. Super. Ct. 1991); Walton v. Philadelphia National Bank, 545 A.2d 1383 (Pa. Super. Ct. 1988); Vaughn v. Didizian, 648 A.2d 38 (Pa. Super. Ct. 1994)).

23. Applying those principles here, it is clear that any failure by Marshall Dennehey to submit invoices on a monthly basis is not a basis for Defendants to refuse to make payment, particularly where as here no evidence was introduced that the parties ever agreed to such a provision.

24. Moreover, Defendants continued to retain Marshall Dennehey to provide services to them after Marshall Dennehey in some of the matters failed to submit monthly invoices, thus suggesting that the parties' course of conduct does not support the interpretation of the agreement urged on the Court by Defendants.

25. Finally, as to Plaintiff's claims for unjust enrichment, the Court concludes that Defendants requested and received from Marshall Dennehey the benefit of its legal services under circumstances in which it would be unjust for them not to pay for those services. In all of

the matters in which Marshall Dennehey entered its appearance and provided legal services, it did so at the express request of one or more of the Defendants, and provided valuable legal services to Defendants. The Court does not credit Defendants' argument that Marshall Dennehey spent too much time on any one or more particular matters, and, on the contrary, finds that Marshall Dennehey did in fact provide quality representation to Defendants. The Court further finds that in some cases, circumstances beyond its control - - including the conduct of its own clients -- made it impossible for Marshall Dennehey to quickly and inexpensively resolve or settle the matters, and a greater degree of legal work was required of it. Even in that category of cases, the Court finds that Marshall Dennehey provided skilled representation for which it should be compensated.

26. Having heard all of the testimony of the witnesses and carefully considered the documentary evidence submitted by the parties, the Court concludes that Marshall Dennehey is entitled to judgment in its favor and against Defendants in the amount of \$160,092.76. No prejudgment interest will be awarded.

An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>MARSHALL, DENNEHEY, WARNER,</b>	:	
<b>COLEMAN &amp; GOGGIN, P.C.,</b>	:	
<b>Plaintiff,</b>	:	<b>CIVIL ACTION</b>
	:	<b>NO. 07-1265</b>
<b>v.</b>	:	
<b>JACK H. BOYAJIAN, ET AL.,</b>	:	
<b>Defendants.</b>	:	

**ORDER**

**AND NOW**, this \_\_\_\_ day of July 2008, pursuant to the agreement of the parties and Federal Rule of Civil Procedure 41(a)(2), **IT IS HEREBY ORDERED AND DECREED** that Defendant Karen Wachs is hereby dismissed as a defendant in the above-captioned action.

**IT IS FURTHER ORDERED** that after a bench trial, pursuant to Federal Rule of Civil Procedure 52(a), **JUDGMENT** is **ENTERED** in favor of Plaintiff and against all remaining Defendants in the amount of \$160,092.76.

**BY THE COURT:**

/s/ **Petrese B. Tucker**

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**Hon. Petrese B. Tucker, U.S.D.J.**